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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/612,810	07/10/2000	Anthony S. Bradley	BIT-12	8996

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliance With 37 CFR 1.192(c)	Application No. 09/612,810	Applicant(s) BRADLEY, ANTHONY S.	
	Examiner Raymond W. Addie	Art Unit 3671	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 23 April 2004 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☒ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☒ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☒ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☐ Other (including any explanation in support of the above items):

Continuation Page
Of
Notification of Non-Compliance
With C.F.R. 1.192(c)

1. The Appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because Claims 52-60, 63-70, 72-74 are not listed in the groupings of claims, even though these claims have been finally rejected.

The MPEP with respect to 37 CFR 1.192 states:

"7) *Grouping of claims.* For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable."

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because Claims 52-60, 63-70, 72-74 have been finally rejected, but not grouped in any grouping of claims, in the brief. Hence, it is unclear as to whether the Appellant is contesting the grounds of rejection for these claims, or if Appellant is knowingly "not contesting" the grounds of rejection. Thereby admitting the above cited claims contain no issues for patentability.

Further claims 76 and 77 are not grouped as standing or falling with other claims, but are specifically argued. Since Claims 76, 77 are not grouped in the grouping of claims, it is unclear as to whether the cited claims constitute a separate grouping not standing or falling with other claims, or if other claims should be grouped with claims 76, 77 and hence stand or fall with claims 76 and 77.

Therefore, the nature of the defect would prevent the Office from putting forth an answer to Appellant's brief, with respect to claims 76 and 77.

Still further, in the Grouping of Claims Appellant states "Claims 35, 37-43, 45 and 49-74 stand finally rejected under 35 U.S.C. 103(a) as unpatentable over Dooleage in view of Bradley. As to this contested ground of rejection...claims 49 and 50 rise and fall together but apart from the rest of the group, claim 51 rises or falls by itself, claim 62 rises or falls by itself, and claims 61 and 71 rise and fall together but apart from the rest of the group".

Here Appellant clearly states "Claims 49 and 50 rise and fall together but apart from the rest of the group, claim 51 rises or falls by itself".

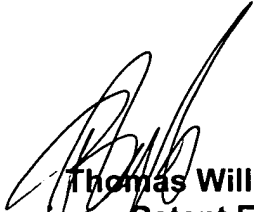
However, Claims 49 and 50 are not separately argued but instead are argued in conjunction with claim 51.

Still further as put forth in MPEP 37 CFR 1.192(c)(8) "Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable".

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 703 305-0135. The examiner can normally be reached on 8-2, 6-8.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Thomas Will
Supervisory Patent Examiner
Group 3600

11/16/04